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Attorney for Defendant

Lyle Rikio Cummings

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

United States of America,

Plaintiff,

vs.

Lyle Rikio Cummings,

Defendant.

Case: CR 22-00023 DKW

[18 U.S.C. 2422(b); 21 U.S.C. 841(a)(1) and
841(b)(1)(C)]

**Defendant's First Motion to Continue
Trial Date; Declaration of Counsel**

Trial Date/Time: 8/22/22 at 8:30 a.m.

Defendant's First Motion to Continue Trial Date

Defendant Lyle Rikio Cummings, by counsel, moves for a continuance of trial from August 22, 2022, to a trial week in March 2023, on grounds that:

1. Defense counsel needs additional time to prepare the defense herein;
2. Defense counsel, beginning late last year, has suffered from an autoimmune disease Polymyalgia Rheumatica for which he is undergoing treatment and an apparently unrelated, undiagnosed neurological problem involving the frontal lobes (executive functioning). Despite these matters, Defense counsel continues to work effectively, though not as quickly;

3. Defense counsel is calendared in the First Circuit, State of Hawaii, to defend a murder/manslaughter, robbery prosecution, now scheduled to begin in August; and
4. Defendant's mother, Evelyn Cummings, is a surviving spouse whose husband of more than 50 years unexpectedly died earlier this year. Evelyn, although in relatively good health, is subject to the "widowhood effect", where she faces a greatly increased risk of death herself in the months following a longtime spouse's death. Defendant and his wife, Vianna, who is Third Party Custodian for Defendant, reside with and are primary care takers for Evelyn. Research has shown that if given steady physical and emotional support by family members, surviving spouses tend to avoid death and regain their earlier levels of health (both physical and psychological) within about 18 months of their spouse's death.

Defendant files this motion pursuant to Rule 47, Federal Rules of Criminal Procedure. This motion is supported by the attached declaration of counsel, the record, and such matters filed hereafter and presented at hearing hereon.

Dated at Honolulu, Hawaii, June 17, 2022.

/s/ Joseph R. Mottl
Joseph R. Mottl
Counsel for Defendant
Lyle Rikio Cummings

Declaration of Counsel

I, **Joseph R. Mottl**, hereby declare as follows:

1. I have been Defense Counsel for Lyle Rikio Cummings since December 9, 2021.
2. I have studied the discovery disclosed by the United States on or about April 8, 2022, and interviewed the defendant. Upon information and belief, I state:
3. The Criminal Complaint was filed on June 18, 2021, the Indictment was filed March 24, 2022, and the defendant was arraigned on April 1, 2022.
4. The offenses charged in the Indictment were allegedly committed on or about March 13 to March 15, 2020, on the island of Maui.
5. The case is the result of a joint Federal/County of Maui investigation involving the use of a worldwide social media platform SKOUT.
6. Prosecution witnesses will include persons involved from of the Maui County Police Department, Homeland Security Investigation and Skout social media platform.
7. I am currently fighting a Covid-19 virus infection notwithstanding having two inoculations and a booster last year. To complicate matters, medications I am taking for hypertension and for an autoimmune illness, Polymyalgia Rheumatica, I was diagnosed with in December 2021, limit my options for anti-viral medication because I am considered immunocompromised. I am scheduled to receive an Emergency Use Authorization for Bebtelovimab, an experimental antiviral medication.

8. My ongoing treatment for Polymyalgia Rheumatica is of indefinite duration, but most cases resolve before two years. The symptoms are extreme pain in the upper legs and shoulders. An additional problem I may have is an apparently unrelated, undiagnosed neurological problem involving the frontal lobes (executive functioning). I underwent neuropsychological testing, was referred to a neurologist and have an upcoming MRI Brain Mapping. Notwithstanding these matters, I continue to work effectively, albeit slower.
9. The Lyle Cummings was born and raised on Maui and, until his arrest in the present matter, lived his entire life with his parents, Leander and Evelyn Cummings, at their Makawao home.
10. Following his arrest, until this January, defendant was required to live on Oahu as a condition of release on bond. This Honorable Court modified the terms of Lyle's release on bond, permitting him to temporarily return to Maui to care for his parents and to facilitate his father's Leander's move home from Maui Memorial Hospital where he had been hospitalized following an accidental fall.
11. Seven days after Lyle's return to Maui, his father unexpectedly died, leaving Evelyn, spouse for more than 50 years, grief stricken.
12. Lyle continues to follow the terms of his release, reside at home with his wife Vianna and mother Evelyn.
13. Evelyn Cummings, 75 years old, 5'2" and about 120 lbs., has endured and continues to experience great distress resulting from her husband's sudden death. The pending proceedings herein, the absence of her son and

daughter-in-law who will travel to Honolulu for pretrial proceedings and trial, will reduce the support she needs at this time. She has been referred for psychological counseling which should be somewhat helpful.

14. Research has shown that if given steady physical and emotional support by family members, surviving spouses tend to avoid death and regain their earlier levels of health (both physical and psychological) within about 18 months of their spouse's death.¹

15. The defense wishes to continue trial date until March 2023, when the defense will have had time to prepare for trial and Evelyn Cummings will be nearly beyond the period of danger.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated at Honolulu, Hawaii, June 22, 2022.

_____/s/ Joseph R. Mottl
Joseph R. Mottl
Attorney for Defendant
Lyle Rikio Cummings

¹ Holm AL, Berland AK, Severinsson E. Factors that influence the health of older widows and widowers-A systematic review of quantitative research. *Nurs Open*. 2019;6(2):591-611. doi:10.1002/nop2.243